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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act	)	
Competitive Bidding	)	

Petition for Reconsideration of EATELCORP, Inc.

EATELCORP, Inc., ("EATEL"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules,[1] respectfully seeks reconsideration of the Fifth Report & Order ("Order") released herein on July 15, 1994.[2]

EATEL's majority and controlling shareholders are women. EATEL is primarily involved in telecommunications; it owns and operates the East Ascension Telephone Company, Inc., which serves approximately 27,000 access lines in and around Gonzales, Louisiana. EATEL is actively considering participation in the provision of Personal Communications Service ("PCS"), and is concerned that the Commission's Rules may inadvertently impede its ability to do so. While the Order does take certain measures in response to Congressional directives to ensure opportunities for

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[1] 47 C.F.R. § 1.429.

[2] Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Fifth Report & Order, released July 15, 1994, 59 Fed. Reg. 37566 (July 22, 1994) ("Order"). See also Notice of Proposed Rulemaking, PP Docket 93-253, FCC 93-455, released October 12, 1993. ("NPRM"); Second Report & Order, PP Docket 93-253, FCC 94-61, released April 20, 1994.

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businesses owned by minorities and/or women, EATEL submits that one provision of this Order unnecessarily limits participation by existing women and/or minority controlled businesses, and thus is contrary to Congressional intent.[3]

SUMMARY OF EATEL'S POSITION

EATEL submits that current Commission ownership requirements are unnecessarily restrictive. Specifically, Section 24.720(c)(i) of the Commission's Rules requires that minority and/or women-owned businesses are eligible for preferential treatment only if they have a control group composed 100 percent of minorities and/or women. Many small telephone companies and other businesses which are controlled by minorities and/or women nonetheless have some percentage of non-minority, male shareholders. Under current rules, these existing businesses, while surely among the intended beneficiaries of the Congressional mandate, are ineligible "control group" participants because they do not meet the 100 percent ownership requirement.

As a consequence of this provision, existing minority and/or women-owned businesses could face insurmountable difficulties in

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[3] We note that the Commission is presently reviewing its rules governing preference eligibility for women and minority-owned businesses. See, e.g., "FCC Rethinks Airwaves Auction Rules for Women and Minorities," Washington Post, D8 (August 11, 1994). The issue Eatel raises has previously been brought to the Commission's attention in response to this report. See ex parte Letter of August 15, 1994 from Charles D. Cosson to various FCC staff.

bidding for PCS spectrum. Section 24.720(c)(i) of the Commission's Rules precludes existing minority and/or women-controlled businesses from taking advantage of the preferences for which they are otherwise eligible if such businesses join with passive investors for financial strength. This anomalous result contradicts the Commission's recognition that preferences are necessary for minority and/or women-owned businesses to attract sufficient capital to effectively compete in spectrum auctions: "Absent such measures . . . it would be virtually impossible to assure that these groups achieve any meaningful measure of opportunity". Order, para. 132.

Accordingly, EATEL recommends that the FCC amend its rules to provide that control group participants, for purposes of eligibility for minority and/or women-owned business preferences, may include businesses which are majority-owned and controlled by women and/or minorities. Thus, if a woman/minority controlled entity or group of entities controls the PCS applicant, and the applicant meets either of the equity tests described in the rules, the applicant should qualify as a designated entity.

DISCUSSION

I. The Commission's Rules preclude certain businesses owned and controlled by minorities and/or women from qualifying for the preferences intended to benefit such businesses.

The Order correctly notes that Congress ordered the Commission to design auction procedures that ensure opportunities for designated entities to obtain licenses and provide services. Order, para. 93. The Commission determined that a system of preferences is necessary to achieve this objective. Id. Both Congress and the Commission found that, in an auction environment, documented difficulties in accessing capital would inevitably exacerbate the already severe under-representation of women and minorities in the telecommunications industry. See, e.g., Order, paras. 98-112.

Pursuant to this mandate, the Commission devised a number of preferences available to PCS applicants that qualify as women or minority-owned businesses. See, e.g., Order, para. 113. Additionally, in defining the entities which qualify for women and/or minority status, the Commission correctly noted that women and/or minorities require more flexibility in attracting financing, and therefore relaxed its rules governing the attribution of passive investors. Order, para. 160. These provisions, however do not adequately address the fact that existing women-controlled businesses are also among the intended beneficiaries of the Congressional mandate.

Companies such as EATEL which are controlled, but not 100 percent owned, by women and/or minorities are eligible themselves for preferential treatment, but are artificially precluded from maintaining that eligibility when joining with other investors because they are ineligible "control group" participants under current rules. 47 C.F.R. § 24.720(c)(i). Consequently, the rules unnecessarily restrict the opportunity for these companies to take advantage of Congressionally-targeted preferences so severely as to render the benefits non-existent.

Small women and/or minority controlled businesses must attract investors to create viable bidding entities. Yet, under current rules, these existing businesses must segregate "eligible" from "ineligible" owners and organize a new entity to take full advantage of the measures intended for their benefit. These artificial restrictions impose unnecessary organizational costs and deprive newly-formed single-purpose entities of the existing companies' expertise. This wasteful activity could be avoided, and Congress' and the Commission's goals accomplished, by a simple adjustment in current rules which recognizes that control of an entity by women and/or minorities is sufficient to ensure the flow of preferences to intended beneficiaries.

As demonstrated below, exclusion of existing women-owned and controlled telecommunications businesses such as EATEL is unnecessary, and contrary to the Congressional mandate. EATEL therefore requests that the Commission amend Section 24.720(c)(i) to provide that women-owned businesses qualify for preferences when the control group is 100% composed of women, minorities, and/or entities which are women and/or minority controlled.

II. The Commission's restrictive rule is unnecessary to further the Commission's goals.

According to the Order, Section 24.720(c)(i)'s adoption of the control group requirement is intended to ensure that the applicant remains under the control of entities who are the intended beneficiaries of the Congressional mandate. See Order, para. 158-59. On this basis, the Commission has also adopted other provisions which limit the percentage of equity which can be owned by outside investors to 15% of the available voting interests. See, e.g., Order, paras. 160-166; see also Order on Reconsideration, PP Docket 93-253, FCC 94-217, released August 15, 1994 (raising the threshold of non-attributable voting interests in a corporation which outside investors may hold from 5% to 15% for non-publicly traded corporations).

Under these rules, the existence of non-controlling equity interests within individual control-group businesses has no effect on the ability of the control-group businesses to maintain ownership and control of the applicant. Moreover, where the women and/or minority-controlled control group owns the largest share of the applicant's equity and controls the applicant in every respect, minority-interest shareholders in the control group entities have no ability to direct the affairs of either the control group businesses or the applicant. In short, there are ample other safeguards more directly related to the Commission's concern that preferences are targeted to intended beneficiaries. Thus, there is no need to require that the control group businesses be 100% women and/or minority owned. In fact, such a requirement undermines the Congressional intent and public policy objective that licenses be awarded to entities which are women and/or minority controlled (which clearly does nor require 100% women and/or minority ownership).

Existing businesses owned and controlled by women are clearly the intended beneficiaries of the Congressional mandate, and applicants owned and controlled by such entities should qualify for preferences designed to implement the mandate.

CONCLUSION

New PCS services represent a significant opportunity for women-owned businesses due in part to a Congressional mandate to ensure that the use of competitive bidding to award PCS licenses does not exclude meaningful participation by women and minority owned businesses. In order to fulfill this mandate, the Commission's rules which protect against shams and fronts should not preclude eligible and experienced women and minority owned businesses from attracting sufficient capital.

Specifically, the Commission need not require that an eligible applicant identify a control group which is 100% women and/or minority owned, provided that a control group is 100% comprised of businesses which are owned and controlled by women and/or minorities.

Respectfully submitted,

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August 22, 1994

CERTIFICATE OF SERVICE

I, Nicola A. Chenosky, hereby certify that on this 22nd day of August, 1994, a courtesy copy of the foregoing "Petition for Reconsideration of EATELCORP, Inc." was served by hand delivery to the following parties:

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